

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ESTHER'S FOLLIES, INC.

§
§
§
§
§
§
§
§
§

Plaintiff,

v.

**MOUNT VERNON FIRE INSURANCE
COMPANY,**

Defendant.

CIVIL ACTION NO.

1:23-cv-01218

**DEFENDANT MOUNT VERNON FIRE INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332(a)(1), 1441(a) and 1446, Defendant Mount Vernon Fire Insurance Company (“Defendant” or “Mount Vernon”) in Cause No. D-1-GN-23-004387 pending in the 200th Judicial District Court of Travis County, Texas files this Notice of Removal from that Court to the United States District Court for the Western District of Texas, Austin Division because the parties are of diverse citizenship and the amount in controversy requirement is satisfied. In support of this Notice of Removal, Defendant respectfully shows:

**I.
FACTUAL BACKGROUND**

1.1 On August 14, 2023, Plaintiff Esther's Follies, Inc. (“Plaintiff”) filed its Original Petition in the matter styled *Esther's Follies, Inc. v. United States Liability Insurance Company and Mount Vernon Fire Insurance Company*; Cause No. D-1-GN-23-004387 in the 200th Judicial District Court of Travis County, Texas, in which Plaintiff asserts claims for breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas Insurance Code, DTPA violations, and violations of the Prompt Payment of Claims Act. Plaintiff's property is located in

Travis County, Texas and is alleged to have been damaged during a hailstorm on or about March 24, 2021.

1.2 Plaintiff served Defendant with the citation and Plaintiff's Original Petition on September 6, 2023 by delivering to the Texas Insurance Commissioner via certified mail, return receipt requested. Defendant files this Notice of Removal within the thirty (30) day time period required by 28 U.S.C. § 1446(b). Attached hereto as Exhibit "1" is the Index of State Court Documents. A copy of the Travis County Clerk's file for this case is attached as Exhibit "2" and includes true and correct copies of all documents on file and a copy of the docket sheet.

1.3 Defendant Mount Vernon Fire Insurance Company served its Original Answer in State Court on September 29, 2023.

1.4 United States Liability Insurance Company is an improper party because it was not the party that issued the insurance policy that forms the basis of this lawsuit.

II.
BASIS FOR REMOVAL

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. The Parties are of Diverse Citizenship

2.2 Upon information and belief and based on the allegations set forth in Plaintiff's Original Petition, Plaintiff is a resident of Travis County, Texas. *See* Plaintiffs' Original Petition at p. 2, ¶IV.8. As such, Plaintiff is a citizen of the State of Texas for the purposes of a diversity jurisdiction analysis.

2.3 Defendant Mount Vernon Fire Insurance Company is an insurance business corporation with its principal place of business in Pennsylvania and is a citizen of the State of

Pennsylvania for diversity purposes. Accordingly, Defendant is of diverse citizenship from Plaintiff.

2.4 Improperly named Defendant USLIC is a Pennsylvania corporation with its principal place of business in Pennsylvania and is a citizen of the State of Pennsylvania for diversity purposes. Accordingly, the Improperly named Defendant USLIC is also of diverse citizenship to Plaintiff.

B. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction

2.4 To have federal diversity jurisdiction, in addition to the parties being totally diverse as described above, the amount in controversy between the parties must exceed \$75,000. This lawsuit arises from an insurance coverage dispute relating to alleged damage to the roof. Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000. *See* Plaintiffs' Original Petition at p. 2, ¶III.6. Previously, the Plaintiff submitted an estimate for roof replacement and building repairs in the amount of \$273,269.54 in connection with the claim made the basis of this lawsuit. *See* Plaintiffs' Original Petition at p.2, ¶IV.8. Because this amount clearly exceeds the jurisdictional requirements of an amount in controversy that exceeds \$75,000 and because Plaintiff and Defendant are diverse, diversity jurisdiction is proper.

**III.
THE REMOVAL IS PROCEDURALLY CORRECT**

3.1 Defendant was first served with Plaintiff's Original Petition on September 6, 2023. Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b).

3.2 Venue is proper in this District under 28 U.S.C. §1446(a) because this District includes the county in which the state action is pending and is the county in which all or a substantial part of the events giving rise to Plaintiff's claim occurred.

3.3 Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, and all other filings in the state court action are attached to this Notice.

3.4 Pursuant to 28 U.S.C. § 1446(d), promptly after Defendant files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.5 Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Travis County District Court after Defendant files this Notice.

IV.
DOCUMENTS AND EXHIBITS ACCOMPANYING REMOVAL

4.1 All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. § 1446(a).

4.2 Attached hereto as Exhibit “1” is the Civil Cover Sheet.

4.3 Attached hereto as Exhibit “2” is the Supplement to the Civil Cover Sheet.

4.4 Attached hereto as Exhibit “3” is a copy of the Index of State Court Documents.

4.5 Attached hereto as Exhibit “4” is a copy of the State Court’s “Register of Actions.”

4.6 Attached hereto as Exhibit “4-1” is a file-marked copy of Plaintiff’s Original Petition file-marked August 14, 2023.

4.7 Attached hereto as Exhibit “4-2” is a file-marked copy of the Executed Citation for Mount Vernon Fire Insurance Company file-marked September 11, 2023.

4.8 Attached hereto as Exhibit “4-3” is a file-marked copy of the Executed Citation for United States Liability Insurance Company file-marked September 11, 2023.

4.9 Attached hereto as Exhibit “4-4” is a copy of Mount Vernon Fire Insurance Company’s Original Answer dated September 29, 2023.

4.10 Attached hereto as Exhibit “4-5” is a copy of the Notice to State Court of Removal that will be filed immediately after the filing of this removal.

V.
CONCLUSION

5.1 Based upon the foregoing, and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendant Mount Vernon Fire Insurance Company hereby removes this case to this court for further proceedings.

PRAYER

WHEREFORE, Defendant Mount Vernon Fire Insurance company removes the above-captioned matter, now pending in the 200th District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,

By: /s/ Daniel P. Buechler
Daniel P. Buechler
State Bar No. 24047756
dbuechler@thompsoncoe.com
THOMPSON, COE, COUSINS & IRONS, L.L.P.
700 N. Pearl Street, 25th Floor
Dallas, Texas 75201
214-871-8262
214-871-8209 (fax)

Case K. Donovan
State Bar No. 24104394
cdonovan@thompsoncoe.com
THOMPSON, COE, COUSINS & IRONS, L.L.P.
701 Brazos, Suite 1500
Austin, Texas 78701
512-703-5087
512-708-8777 (fax)

**ATTORNEYS FOR DEFENDANT MOUNT
VERNON FIRE INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document was served on the following counsel of record in accordance with the TEXAS RULES OF CIVIL PROCEDURE on the 6th day of October, 2023:

Robert N. Grisham II
William A. Kendall
Grisham & Kendall, PLLC
5910 N. Central Expwy., Suite 952
Dallas, Texas 75206
Attorneys for Plaintiff

/s/ Daniel Buechler
Daniel Buechler